

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1971

ENROLLED

COMMITTEE SUBSTITUTE FOR.
HOUSE BILL No. 647

ORIGINATING IN THE COMMITTEE ON THE JUDICIARY
(By AAr. _____)

PASSED FEBRUARY 10, 1971

In Effect FROM _____ Passage



FILED IN THE OFFICE
JOHN D. COURSELLER, IV
SECRETARY OF STATE
THIS DATE 2-12-71

647

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COMMITTEE SUBSTITUTE
FOR
House Bill No. 647

(Originating in the Committee on the Judiciary)

[Passed February 10, 1971; in effect from passage.]

AN ACT to amend and reenact sections two, seventeen, twenty-two and twenty-nine, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia public employees retirement act generally and particularly to those provisions of said act concerning or involving members or former members of the Legislature; redefining the term "final average salary" as used in said act; establishing procedures for determining average compensation of members or former members of the Legislature; and relating to the membership of the public employees retire-

ment system, membership status thereunder, retirement annuities under said system, the increase of certain of said retirement annuities from time to time, the members' deposit fund of said system and the contributions to be made by members to said fund generally and particularly with respect to members of the Legislature.

Be it enacted by the Legislature of West Virginia:

That sections two, seventeen, twenty-two and twenty-nine, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-2. Definitions.

1 The following words and phrases as used in this article,
2 unless a different meaning is clearly indicated by the
3 context, shall have the following meanings:

4 (1) "State" means the state of West Virginia;

5 (2) "Retirement system" or "system" means the West
6 Virginia public employees retirement system created
7 and established by this article;

8 (3) "Board of trustees" or "board" means the board

9 of trustees of the West Virginia public employees re-
10 tirement system;

11 (4) "Political subdivision" means the state of West
12 Virginia, a county, city or town in the state; a school
13 corporation or corporate unit; any separate corporation
14 or instrumentality established by one or more counties,
15 cities or towns, as permitted by law; any corporation
16 or instrumentality supported in most part by counties,
17 cities or towns; any public corporation charged by law
18 with the performance of a governmental function and
19 whose jurisdiction is coextensive with one or more
20 counties, cities or towns, any agency or organization
21 established by, or approved by the department of men-
22 tal health for the provision of community health or
23 mental retardation services, and which is supported in
24 part by state, county or municipal funds;

25 (5) "Participating public employer" means the state
26 of West Virginia, any board, commission, department,
27 institution or spending unit, and shall include any
28 agency created by rule of the supreme court of appeals
29 having full-time employees, which for the purposes of

30 this article shall be deemed a department of state gov-
31 ernment; and any political subdivision in the state which
32 has elected to cover its employees, as defined in this
33 article, under the West Virginia public employees re-
34 tirement system;

35 (6) "Employee" means any person who serves reg-
36 ularly as an officer or employee, full time, on a salary
37 basis, whose tenure is not restricted as to temporary or
38 provisional appointment, in the service of, and whose
39 compensation is payable in whole or in part by any
40 political subdivision, or an officer or employee whose
41 compensation is calculated on a daily basis and paid
42 monthly or on completion of assignment, including
43 technicians and other personnel employed by the West
44 Virginia national guard whose compensation in whole
45 or in part is paid by the federal government: *Provided,*
46 That members of the state Legislature, the clerk of the
47 House of Delegates, the clerk of the state Senate, mem-
48 bers of the legislative body of any political subdivision
49 and judges of the state court of claims shall be con-
50 sidered to be employees, anything contained herein to

51 the contrary notwithstanding. In any case of doubt as
52 to who is an employee within the meaning of this ar-
53 ticle the board of trustees shall decide the question;

54 (7) "Member" means any person who is included in
55 the membership of the retirement system;

56 (8) "Retirant" means any member who retires with
57 an annuity payable by the retirement system;

58 (9) "Beneficiary" means any person, except a re-
59 tirant, who is entitled to, or will be entitled to, an an-
60 nuity or other benefit payable by the retirement system;

61 (10) "Service" means personal service rendered to
62 a participating public employer by an employee, as de-
63 fined in this article, of a participating public employer;

64 (11) "Prior service" means service rendered prior to
65 July one, one thousand nine hundred sixty-one, to the
66 extent credited a member as provided in this article;

67 (12) "Contributing service" means service rendered
68 by a member from and after the date of his entrance in
69 the retirement system, to the extent credited him as
70 provided in this article;

71 (13) "Credited service" means the sum of a mem-

72 ber's prior service credit and contributing service credit
73 standing to his credit as provided in this article;

74 (14) "Compensation" means the remuneration paid
75 a member by a participating public employer for per-
76 sonal services rendered by him to the participating
77 public employer. In the event a member's remunera-
78 tion is not all paid in money, his participating public
79 employer shall fix the value of the portion of his re-
80 muneration which is not paid in money;

81 (15) "Final average salary" means either (a) the
82 average of the highest annual compensation received
83 by a member (including a member of the Legislature
84 who participates in the retirement system in the year
85 one thousand nine hundred seventy-one or thereafter)
86 during any period of three consecutive years of his
87 credited service contained within his ten years of cred-
88 ited service immediately preceding the date his em-
89 ployment with a participating public employer last
90 terminated, or (b) if he has less than five years of
91 credited service, the average of the annual rate of com-
92 pensation received by him during his total years of

93 credited service; and in determining the annual com-
94 pensation, under either (a) or (b) of this subdivision
95 (15), of a member of the Legislature who participates
96 in the retirement system as a member of the Legisla-
97 ture in the year one thousand nine hundred seventy-
98 one or in any year thereafter, his actual legislative
99 compensation (the total of all compensation paid under
100 sections two, three, four and five, article two-a, chapter
101 four of this code) in the year one thousand nine hun-
102 dred seventy-one or in any year thereafter, plus any
103 other compensation he receives in any such year from
104 any other participating public employer including the
105 state of West Virginia, without any multiple in excess
106 of one times his actual legislative compensation as afore-
107 said and other compensation, shall be used: *Provided,*
108 That "final average salary" for any former member of
109 the Legislature or for any member of the Legislature
110 in the year one thousand nine hundred seventy-one
111 who, in either event, was a member of the Legislature
112 on November thirty, one thousand nine hundred sixty-
113 eight, or November thirty, one thousand nine hundred

114 sixty-nine, or November thirty, one thousand nine hun-
115 dred seventy, or on November thirty in any one or
116 more of said three years, and who participated in the
117 retirement system as a member of the Legislature in
118 any one or more of such years of one thousand nine
119 hundred sixty-eight, one thousand nine hundred sixty-
120 nine or one thousand nine hundred seventy, means (i)
121 either [notwithstanding the provisions of this sub-
122 division (15) preceding this proviso] one thousand five
123 hundred dollars multiplied by eight, plus the highest
124 other compensation such former member or member
125 received in any one of said three years from any other
126 participating public employer including the state of
127 West Virginia, or (ii) "final average salary" determined
128 in accordance with (a) or (b) of this subdivision (15),
129 whichever computation shall produce the higher final
130 average salary [and in determining the annual com-
131 pensation under (ii) of this proviso, the legislative
132 compensation of any such former member shall be com-
133 puted on the basis of one thousand five hundred dollars
134 multiplied by eight, and the legislative compensation

135 of any such member shall be computed on the basis set
136 forth in the provisions of this subdivision (15) im-
137 mediately preceding this proviso or on the basis of one
138 thousand five hundred dollars multiplied by eight, which-
139 ever computation as to such member shall produce the
140 higher annual compensation];

141 (16) "Accumulated contributions" means the sum of
142 all amounts deducted from the compensations of a
143 member and credited to his individual account in the
144 members' deposit fund, together with regular interest
145 thereon;

146 (17) "Regular interest" means such rate or rates
147 of interest per annum, compounded annually, as the
148 board of trustees shall from time to time adopt;

149 (18) "Annuity" means an annual amount payable
150 by the retirement system throughout the life of a per-
151 son. All annuities shall be paid in equal monthly in-
152 stallments, using the upper cent for any fraction of a cent;

153 (19) "Annuity reserve" means the present value of
154 all payments to be made to a retirant or beneficiary of
155 a retirant on account of any annuity, computed upon

156 the basis of such mortality and other tables of experience,
157 and regular interest, as the board of trustees shall from
158 time to time adopt;

159 (20) "Retirement" means a member's withdrawal
160 from the employ of a participating public employer with
161 an annuity payable by the retirement system;

162 (21) "Actuarial equivalent" means a benefit of equal
163 value computed upon the basis of such mortality table
164 and regular interest as the board of trustees shall from
165 time to time adopt; and

166 (22) The masculine gender shall include the feminine
167 gender, and words of the singular number with respect
168 to persons shall include the plural number, and vice
169 versa.

§5-10-17. Retirement system membership.

1 The membership of the retirement system shall con-
2 sist of the following persons:

3 (a) All employees, as defined in section two of this
4 article, who are in the employ of a political subdivision
5 the day preceding the date it becomes a participating
6 public employer and who continue in the employ of the

7 said participating public employer on or after the said
 8 date shall become members of the retirement system;
 9 and all persons who become employees of a participating
 10 public employer on or after the said date shall thereupon
 11 become members of the system; except as provided in
 12 subdivisions (b) and (c) of this section.

13 (b) The membership of the retirement system shall
 14 not include any person who is a member of, or who has
 15 been retired by, the state teachers' retirement system,
 16 the judges' retirement system, the retirement system of
 17 the department of public safety, or any municipal retire-
 18 ment system for either, or both, policemen or firemen;
 19 and the West Virginia department of employment se-
 20 curity, by the commissioner of such department, may
 21 elect whether its employees will accept coverage under
 22 this article or be covered under the authorization of a
 23 separate enactment: *Provided*, That such exclusions of
 24 membership shall not apply to any member of the state
 25 Legislature, the clerk of the House of Delegates, the
 26 clerk of the state Senate or to any member of the legis-
 27 lative body of any political subdivision provided he once

28 becomes a contributing member of the retirement sys-
29 tem.

30 (c) Any member of the state Legislature, the clerk
31 of the House of Delegates, the clerk of the state Senate
32 or any member of the legislative body of any other politi-
33 cal subdivision shall become a member of the retirement
34 system provided he notifies the retirement system in writ-
35 ing of his intention to be a member of the system and
36 files a membership enrollment form as the board of
37 trustees shall prescribe, and each person, upon filing his
38 written notice to participate in the retirement system,
39 shall by said act authorize the clerk of the House of Dele-
40 gates or the clerk of the state Senate or such person as
41 the legislative body of any other political subdivision
42 shall designate to deduct said member's contribution, as
43 provided in section twenty-nine-b of this article, and
44 after said deductions have been made from said mem-
45 ber's compensation, such deductions shall be forwarded to
46 the retirement system.

47 (d) Should any question arise regarding the mem-
48 bership status of any employee, the board of trustees has
49 the final power to decide the question.

§5-10-22. Retirement annuity.

1 Upon a member's retirement, as provided in this article,
2 he shall receive a straight life annuity equal to one and
3 five-tenths percent of his final average salary multiplied
4 by the number of years, and fraction of a year, of his
5 credited service in force at the time of his retirement:
6 *Provided, That after March one, one thousand nine hun-*
7 *dred seventy, all members retired and all members*
8 *retiring shall receive a straight life annuity equal to*
9 *two percent of his final average salary multiplied by*
10 *the number of years, and fraction of a year, of his*
11 *credited service in force at the time of his retirement.*
12 In either event, upon his retirement he shall have the
13 right to elect an option provided for in section twenty-
14 four of this article. All annuity payments shall com-
15 mence effective the first of the month following the
16 month in which a member retires or a member dies
17 leaving a beneficiary entitled to benefits and shall con-
18 tinue to the end of the month in which said retirant
19 or beneficiary dies, and said annuity payments shall not
20 be prorated for any portion of a month in which a
21 member retires or retirant or beneficiary dies.

22 The annuity of any member of the Legislature who
23 participates in the retirement system as a member of
24 the Legislature and who retires under this article or
25 of any former member of the Legislature who has re-
26 tired under this article (including any former member
27 of the Legislature who has retired under this article
28 and whose annuity was readjusted as of March one,
29 one thousand nine hundred seventy, under the former
30 provisions of this section) shall be increased from time
31 to time during the period of his retirement when and
32 if the legislative compensation paid under section two,
33 article two-a, chapter four of this code to a member of
34 the Legislature shall be increased to the point where
35 a higher annuity would be payable to the retirant if
36 he were retiring as of the effective date of the latest
37 increase in such legislative compensation, but on the
38 basis of his years of credited service to the date of his
39 actual retirement.

§5-10-29. Members' deposit fund; members' contributions.

- 1 (a) The members' deposit fund is hereby created.
- 2 It shall be the fund in which shall be accumulated, at

3 regular interest, the contributions deducted from the
4 compensation of members, and from which refunds of
5 accumulated contributions shall be paid and transfers
6 made as provided in this section.

7 (b) The contributions of a member to the retirement
8 system (including any member of the Legislature, ex-
9 cept as otherwise provided in subsection (g) of this
10 section) shall be a sum of not less than three and five-
11 tenths percent of his annual compensations but not
12 more than four and five-tenths percent of his annual
13 compensations, as determined by the board of trustees.
14 The said contributions shall be made notwithstanding
15 that the minimum salary or wages provided by law for
16 any member shall be thereby changed. Each member
17 shall be deemed to consent and agree to the deductions
18 made and provided for herein. Payment of a member's
19 compensation less said deductions shall be a full and
20 complete discharge and acquittance of all claims and
21 demands whatsoever for services rendered by him to
22 a participating public employer, except as to benefits
23 provided by this article.

24 (c) The officer or officers responsible for making up
25 the payrolls for payroll units of the state government
26 and for each of the other participating public employers
27 shall cause the contributions, provided for in subsec-
28 tion (b) above, to be deducted from the compensations
29 of each member in the employ of the participating public
30 employer, on each and every payroll, for each and every
31 payroll period, from the date the member enters the
32 retirement system to the date his membership terminates.
33 When deducted, each of said amounts shall be paid by
34 the participating public employer to the retirement
35 system; said payments to be made in such manner and
36 form, and in such frequency, and shall be accompanied
37 by such supporting data, as the board of trustees shall
38 from time to time prescribe. When paid to the retire-
39 ment system, each of said amounts shall be credited
40 to the members' deposit fund account of the member
41 from whose compensations said contributions were de-
42 ducted.

43 (d) In addition to the contributions deducted from
44 the compensations of a member, as heretofore provided,

45 a member shall deposit in the members' deposit fund,
 46 by a single contribution or by an increased rate of
 47 contribution as approved by the board of trustees, the
 48 amounts he may have withdrawn therefrom and not
 49 repaid thereto, together with regular interest from the
 50 date of withdrawal to the date of repayment. In no
 51 case shall a member be given credit for service rendered
 52 prior to the date he withdrew his contributions or ac-
 53 cumulated contributions, as the case may be, until he
 54 returns to the members' deposit fund all amounts due
 55 the said fund by him.

56 (e) Upon the retirement of a member, or if a sur-
 57 vivor annuity becomes payable on account of his death,
 58 in either event his accumulated contributions standing
 59 to his credit in the members' deposit fund shall be trans-
 60 ferred to the retirement reserve fund.

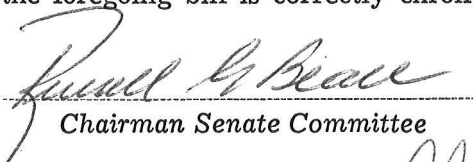
61 (f) In the event an employee's membership in the
 62 retirement system terminates and no annuity becomes
 63 or will become payable on his account, any accumulated
 64 contributions standing to his credit in the members'
 65 deposit fund, unclaimed by the said employee, or his

66 legal representative, within three years from and after
67 the date his membership terminated, shall be transferred
68 to the income fund.

69 (g) Any member of the Legislature who is a member
70 of the retirement system and with respect to whom
71 the term "final average salary" includes a multiple of
72 eight, pursuant to the provisions of subdivision (15),
73 section two of this article, shall contribute to the retire-
74 ment system on the basis of his legislative compensation
75 the sum of five hundred forty dollars each year he par-
76 ticipates in the retirement system as a member of the
77 Legislature.

Transmitted

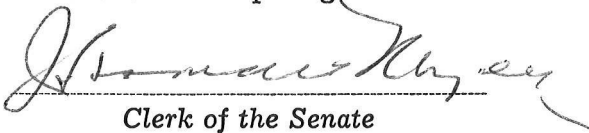
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



Chairman Senate Committee


Chairman House Committee

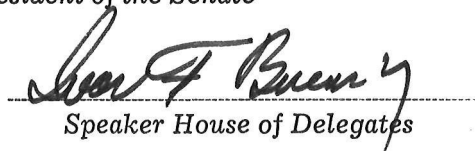
Originated in the House.

Takes effect from passage.


Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker House of Delegates

The within approved this the 12th
day of February, 1971.


Governor



PRESENTED TO THE
GOVERNOR

Date 2/12/71

Time 9:50 A.M.

RECEIVED

FEB 12 3 50 PM '71

OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA